

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Stephen A. Hodgson,

Plaintiff,

v.

Civil No. 08-5120 (JNE/SRN)
ORDER

Joan Fabian, et al.,

Defendants.

This case is before the Court on a Report and Recommendation issued by the Honorable Susan Richard Nelson, United States Magistrate Judge, on August 18, 2009. Plaintiff, a member of the Wiccan faith, is a prisoner at the Minnesota Correctional Facility at Stillwater. Defendants are employees of the correctional facility or officials in the Minnesota Department of Corrections. Plaintiff asserts claims under 42 U.S.C. §§ 1983, 1985 (2006) and the Religious Land Use and Institutionalized Persons Act (RLUIPA) based on censorship of his mail, the facility's prohibition of smudging and burning incense in the prison chapel, and the facility's herb and prayer oils policies. The magistrate judge recommended that Defendants' Motion for Summary Judgment be granted and that Plaintiff's Motion to Deny Summary Judgment be denied. Plaintiff objected to the Report and Recommendation. Defendants objected to portions of the Report and Recommendation. The Court has conducted a de novo review of the record. *See D. Minn. LR 72.2(b)*. Based on that review, the Court adopts the Report and Recommendation to the extent indicated below.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Plaintiff's claims under § 1983 for declaratory and injunctive relief for alleged violations of his right to freedom of speech are DISMISSED AS MOOT insofar as they are based on the censorship of his mail.

2. Plaintiff's claims under § 1983 and RLUIPA for alleged violations of his right to exercise his religion are **DISMISSED WITH PREJUDICE** insofar as they are based on the censorship of his mail because Plaintiff has not established that Defendants' actions substantially burdened the practice of his religion.
3. Plaintiff's claims under § 1983 and RLUIPA for alleged violations of his right to exercise his religion are **DISMISSED WITH PREJUDICE** insofar as they are based on the smudging and burning policy because the policy is the least restrictive means of preventing discord among inmates caused by lingering smoke smells in the chapel.
4. The remainder of Plaintiff's claims are **DISMISSED WITH PREJUDICE** for the reasons stated in the Report and Recommendation.
5. Defendants' Motion for Summary Judgment [Docket No. 11] is **GRANTED**.
6. Plaintiff's Motion to Deny Summary Judgment [Docket No. 33] is **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 10, 2009

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge